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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights

Paris, 7-9 October 1991

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Introduction

I. Organization of the Workshop

1. The first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris from 7 to 9 October 1991.

2. The Workshop, organized by the United Nations Centre for Human Rights in cooperation with the French National Consultative Commission on Human Rights and at the invitation of the French Government, was held in the context of the implementation of the United Nations Programme of Advisory Services in the field of Human Rights, adopted by the General Assembly in resolution 926 (X) of 14 December 1955. It was also held pursuant to General Assembly resolution 44/64 and Commission on Human Rights resolutions 1990/73 and 1991/27.

3. In view of the important role that national institutions are able to play at the national level in protecting human rights and fundamental freedoms and in bringing these rights to the attention of public opinion, the Workshop was intended, in particular, to provide an opportunity for considering existing or potential forms of cooperation between these institutions and the intergovernmental organizations, such as the United Nations, in order to make them more effective.

4. The Workshop was also intended to give each national institution an opportunity to describe its structures and functioning and to exchange experience, so as to increase the awareness of all States Members of the United Nations and encourage the existing national institutions to step up their action, if necessary, in order to ensure the optimum promotion and protection of human rights.

A. Participants

5. Invitations to designate participants were sent to the national institutions of the following countries: Australia, Benin, Brazil, Canada, Chile, France, Italy, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Philippines, Senegal, Togo, Tunisia, Turkey, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

6. The representatives of the following national institutions took part in the Workshop: Human Rights and Equal Opportunity Commission, Australia; Beninese Commission on Human Rights, Benin; Council for the Protection of Human Rights, Brazil; Canadian Human Rights Commission, Canada; Chilean Commission on Human Rights, Chile; Commission on Civil Rights, United States of America; National Consultative Commission on Human Rights, France; Commission on Human Rights, Italy; Advisory Council on Human Rights, Morocco; National Commission on Human Rights, Mexico; Human Rights Commission, New Zealand; Advisory Commission on Human Rights, Norway; Commission of Inquiry into Violations of Human Rights, Uganda; Human Rights and Foreign Policy Advisory Commission, Netherlands; National Council on Human Rights, Peru; Commission on Human Rights, Philippines; Commission for Racial Equality,

United Kingdom; Commission on Human Rights, Senegal; National Commission on Human Rights, Togo; Higher Committee on Human Rights and Fundamental Freedoms, Tunisia; Human Rights Commission, Turkey; Political Commission for International Cooperation and Humanitarian and Human Rights Problems, Union of Soviet Socialist Republics; Attorney-General of the Republic, Venezuela; and Committee for the Protection of Liberties and Human Rights, Yugoslavia.

7. Representatives of ombudsmen and mediators of the following countries also accepted the invitations they received and took part in the Workshop: Colombia, Denmark, Finland, France, Guatemala, Iceland, Ireland, Japan, Namibia, Romania, Spain, Sweden and Thailand.

8. Representatives of embassies accredited to the French Government also took part in the Workshop.

9. Invitations were also sent to the organizations and specialized agencies in the United Nations system and other intergovernmental bodies. The Workshop was attended by representatives of the United Nations Department of Public Information, the International Labour Organisation, the Agency for Cultural and Technical Cooperation, and the Commonwealth Secretariat for Human Rights.

10. Among the regional institutions invited to attend as observers, the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the European Court of Human Rights were represented.

11. In addition, among the training institutes and non-governmental organizations in consultative status with the Economic and Social Council duly invited to the Workshop as observers, representatives attended from the African Centre for Human Rights and Democracy, Amnesty International, the Andean Commission of Jurists, the International Association of Democratic Lawyers, the International Commission of Jurists, the International Federation for Human Rights, the International League for the Rights and Liberation of Peoples, the Lawyers' Committee for Human Rights and the Raoul Wallenberg Human Rights Institute.

12. A complete list of participants is appended to the report (annex I).

13. The Secretary-General of the United Nations was represented by Mr. Jan Martenson, Under-Secretary-General for Human Rights; Mr. Hamid Gaham, Chief, Standard-Setting, Studies and Research Unit of the United Nations Centre for Human Rights, acted as secretary to the Workshop.

B. Opening of the Workshop

14. Mrs. Edith Cresson, Prime Minister of France, opened the first International Workshop on National Institutions for the Promotion and Protection of Human Rights. She referred to their importance in relation to the trend towards democratization that was affecting several countries and expressed the support of the French Government for that initiative.

15. On behalf of the Secretary-General of the United Nations, the Under-Secretary-General for Human Rights made an opening statement in which he

stated that thanks to United Nations action in the protection and promotion of human rights since 1945, an era of universal respect for human rights was no longer an unattainable dream.

16. In his opening statement, Mr. Paul Bouchet, President of the French National Consultative Commission on Human Rights, described the steps taken by his organization in order to perform more effectively its dual role of monitoring human rights and making proposals in that field. He awarded Mrs. Edith Cresson and the Under-Secretary-General medals from the French National Consultative Commission which had been specially struck for the Workshop.

17. These opening statements are reproduced in the annex to this report.

C. Appointment of officers, agenda and organization of work

18. Mr. Paul Bouchet was elected Chairman of the Workshop. He suggested that a Vice-Chairman should be designated every day at the beginning of the meeting. Mr. Rachid Driss (Higher Committee on Human Rights and Fundamental Freedoms, Tunisia), Mrs. Rosario Green (National Commission on Human Rights, Mexico) and Mrs. Mary Concepción Bautista (Commission on Human Rights, Philippines) served as Vice-Chairmen on 7, 8 and 9 October 1991 respectively.

19. Mr. Dominique Turpin (French Institute of Humanitarian Law and Human Rights), Mr. Brian Burdekin (Human Rights and Equal Opportunity Commission, Australia) and Mr. Malamine Kourouma, replacing Mr. Adama Dieng (International Commission of Jurists), were designated rapporteurs for agenda items 1, 2 and 3 respectively.

20. Mr. Maxwell Yalden (Canadian Human Rights Commission), Mrs. M.C. Bautista (Philippines) and Mrs. R. Green (Mexico) also spoke in their capacity as experts on agenda items 1, 2 and 3.

21. In addition to their formal meetings, participants in the Workshop met on Tuesday, 8 October 1991, at the invitation of International Movement ATD Fourth World, around the flagstone honouring the victims of poverty located on the Parvis des libertés et des droits de l'homme, Place du Trocadéro, in Paris. Mr. Jan Martenson and Mr. Paul Bouchet made brief statements on that occasion.

22. The agenda of the Workshop contained the following items:

I. Relations between national institutions and the State

- Legal status
- Method of appointing members and term of office
- Composition
- Referral procedures
- Independence or autonomy

II. Relations between national institutions and other partners

- Participation of non-governmental organizations
- Relations with the Bar elected officials, trade unions, and religious and moral authorities
- Relations with inter-governmental, interregional and international organizations

III. Jurisdiction and competence of national institutions

- Domestic and/or international scope
- Participation in the drafting of legislation, quasi-judicial powers, activities for the promotion and protection of human rights, education, etc.
- Relations with individuals (referral of individual cases to an institution or not, directly or not) and with administrations
- Status of action (advisory or binding)
- Risks of a conflict of jurisdiction.

D. Documentation

23. The secretariat of the Centre for Human Rights submitted the following information papers for use by participants:

HR/PARIS/1991/SEM/BP.1	Guidelines for the structure and functioning of national institutions, approved by the United Nations Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, 1978
HR/PARIS/1991/SEM/BP.2	Definition, jurisdiction and powers of national institutions, by Mr. Brian Burdekin, Australian Federal Human Rights Commissioner
HR/PARIS/1991/SEM/BP.3	Relations between national institutions and the State, by Mr. Dominique Turpin, President of the French Institute of Humanitarian Law and Human Rights, Professor of Law at the University of Clermont-Ferrand (France)
HR/PARIS/1991/SEM/BP.4	Relations between national institutions and other partners, by Mr. Adama Dieng, Secretary-General of the International Commission of Jurists

24. The Centre for Human Rights, the French National Consultative Commission on Human Rights and a number of participants prepared the following documents:

HR/PARIS/1991/SEM/WP.1	Action of the United Nations in the field of national institutions for the promotion and protection of human rights, by the United Nations Centre for Human Rights
HR/PARIS/1991/SEM/WP.2	Files on national institutions throughout the world, by the French National Consultative Commission on Human Rights
HR/PARIS/1991/SEM/WP.3	Human Rights in Canada and the role of the Canadian Human Rights Commission, by Mr. Maxwell Yalden, Chief Commissioner, Canadian Human Rights Commission
HR/PARIS/1991/SEM/WP.4	The Commission on Human Rights of the Philippines and its action, by Mrs. Mary Concepción Bautista, President of the Commission on Human Rights of the Philippines

25. Several participants made available a number of documents containing statutes for reference purposes. These documents are listed in the annex to this report.

II. RELATIONS BETWEEN NATIONAL INSTITUTIONS AND THE STATE

26. This item was discussed at the 1st and 2nd meetings on 7 and 8 October. Mr. Dominique Turpin, in his capacity as rapporteur, introduced the subject, drawing on the paper he had prepared for the benefit of participants.

27. In Mr. Turpin's opinion, it could not be taken for granted that the State, and in particular the Executive branch, was predisposed to promote and protect human rights, because the principle of authority, which was an inherent characteristic of the State, tended to restrict the principle of freedom, which was the basis of human rights. Nevertheless, fears could be allayed somewhat by the concept that it was the State which was or should be at the service of the individual and not vice versa. This in fact was the concept which had underlain the adoption of the Universal Declaration of Human Rights in 1948 and had prompted the United Nations to encourage States to establish human rights commissions.

28. Following the recommendations of Economic and Social Council in resolution 9 (II) of 21 June 1946, the United States had been one of the few countries which (in 1957) set up a body to protect civil rights (Commission on Civil Rights), and in 1964 it had set up another body to combat discrimination in employment (Equal Employment Opportunity Commission). The founding of national institutions gradually increased in tempo, 1978 being a landmark year when the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights proposed a number of basic principles for the

structure and operation of this kind of institution. There were at present a large number of national institutions, which differed in their structure, operation and powers with which they had been endowed. Some 30 countries had established such institutions. They were variously called commissions, councils or committees and were based on the United States, British or French models.

29. As to the relations which those institutions maintained with their respective Governments, they could, in his view, be assessed according to the criterion of independence or autonomy. The effectiveness of this independence or autonomy could be judged by their legal status, composition (method of appointment of members and duration of mandate) and method of operation.

A. Independence through legal status

30. Mr. Turpin excluded from his area of analysis parliamentary institutions, jurisdictional institutions, non-governmental institutions, general administrative institutions or administrative institutions specializing in the protection of specific vulnerable groups (e.g. women, children, refugees, immigrants), and institutions which had been set up on a purely ad hoc basis, for example, commissions of inquiry into specific occurrences or situations. He would concentrate on those institutions whose establishment had been encouraged by the United Nations.

31. The institutions he had selected had certain common features:

They were administrative in nature;

They were attached to, or placed under the supervision of the Executive authority (except for the United States, where the Commission on Civil Rights was independent of any public authority, although its members were appointed by the President and Congress, the Philippine Commission on Human Rights which had been established by the Constitution, the Australian Commission on Human Rights and the Turkish Committee, all of which were linked to Parliament);

They had permanent overall advisory competence with regard to human rights, nationally and/or internationally, to ensure their promotion and protection, generally through opinions or recommendations, or specifically by taking action on appeals originating from individuals (Australia, Brazil, Canada, Chile, Mexico, Philippines, Togo, Uganda, USSR, United Kingdom, United States, Venezuela and Yugoslavia).

32. Generally speaking the higher the status of the instrument establishing the national institution in a country's legislative hierarchy, the easier it was for the institution to ensure that its independence was respected. However, there were at present only two national institutions whose existence was guaranteed by the Constitution, namely, the Office of the Attorney-General of the Republic of Venezuela and the Philippine Commission on Human Rights. The others had been established on the basis of supra legislative provisions (Guatemala), legislative provisions (e.g. Australia, Benin, Brazil, Canada, Italy, Netherlands, New Zealand, Turkey, United Kingdom and United States), a simple regulatory instrument such as a presidential decree (Argentina, Cameroon, Chile, Senegal, Tunisia), a royal decree (Morocco), a government

decree (France, Peru) or even a simple ministerial decree (Uganda). In Cameroon, the national institution had been placed under the supervision of the Executive, which alone had the power to appoint its members.

33. Even though the establishment by and subordination to the Executive did not necessarily affect their independence, it was, in his view, preferable that the national institutions for the promotion and protection of human rights should be established by the Constitution, or at least by a law, and rendered autonomous by cutting any umbilical cord or organic link with a given branch of authority, in particular the Executive. The national institutions should, inter alia, be vested with a moral personality distinct from that of the State, in order to avoid situations in which they were both judges and parties in a case. If, for legal reasons peculiar to a given country, that was not possible, the institutions should at least be subordinate to the highest level of government authority, rather than a specific ministry and should enjoy sufficient authority vis-à-vis the various government departments, although the example of the Commonwealth countries showed that other solutions were conceivable.

B. Independence through composition

34. The composition of a national institution was a further guarantee of its independence vis-à-vis the public authorities and should reflect a degree of sociological and political pluralism. Thus, in most of the existing national institutions, judges, lawyers, scientists, doctors, journalists, human rights activists and specialists, and eminent public figures were variously represented. Apart from the Office of the Attorney-General of the Republic of Venezuela with its 1,200 members (400 procurators and 800 lawyers), the French National Consultative Commission with 70 members (11 representatives of ministries, 28 representatives of non-governmental organizations, 6 of trade unions, 2 of the Parliament and 23 public figures was the institution with the largest membership, whereas the Canadian, New Zealand, Ugandan and Philippine commissions were composed of only 8, 7, 6 and 5 members respectively.

35. There were four main methods of appointing members to the national institutions studied: co-opting (Australia, Benin, Philippines); appointment by Parliament (Guatemala, Turkey, United States of America, Yugoslavia), appointment by the King (Morocco), the Head of State (Cameroon, Chile, Mexico, Senegal, Tunisia, United States of America), or the Head of Government (Canada, France, New Zealand); and lastly appointment by a supervisory Minister such as the Minister of Justice or, more often, the Minister for Foreign Affairs (Benin, Peru, Senegal, Uganda).

36. Although sociological and political pluralism safeguarded the independence of national institutions, despite their organic links with authority, the Anglo-Saxon model, under which human rights commissions, although established by law, were composed of public officials and given practical means and sometimes substantial powers to promote and protect human rights, possessed genuine effectiveness. The commissions of Australia, Canada, New Zealand, the Netherlands and the United Kingdom were cases in point.

C. Independence through operation

37. The rapporteur considered that one of the key features of those institutions or, at least those which were pluralistic in composition, was that they formed links between the experts and representatives of associations, on the one hand, and those of government agencies or departments, on the other. It was therefore important that the various public authorities should be represented in these institutions at a high level, particularly the various ministries whose action had the greatest impact on human rights, not in order to take part in decision-making, but to give and receive information and to engage in as regular and trustful a dialogue as possible. The links with national Parliaments should also be strengthened, through the opportunity given to members of the institutions or their chairmen to brief members of Parliament who exercised a legislative or supervisory function, on those aspects of human rights which were under consideration.

38. The national institutions should also have a substantial budget, which they could use as they saw fit with limited financial control. The budget should at least be sufficient to enable them to have their own staff and premises, so that they would not have to rely on the State for that purpose. They should also, if they wished, be able to draw up their own rules of procedure without interference from the supervisory authority, on the understanding that customary rules could prove more flexible and effective in that respect.

39. With regard to the legal means with which national institutions should be provided, he was of the view that it was neither desirable nor useful to vest them with real decision-making powers of the kind enjoyed by other bodies. On the other hand, it was essential that they should at least have the power to take up matters without having to refer them to a higher body, either at the behest of private individuals, or on the initiative of a number of their members. The task of protecting human rights assigned to the national institutions should extend to the possibility of hearing individual complaints, investigating them and submitting to the relevant departments any recommendations which appeared necessary, and if the recommendations yielded no results, they should be able to inform public opinion and or bring the matter before the competent jurisdictional bodies.

40. Lastly, the opinions and recommendations of the national institutions should be given adequate publicity, in easily accessible official publications, such as the official gazette.

D. General debate

41. The representatives of national institutions who spoke under this item for the most part described their institutions and explained their main features. Some NGO representatives emphasized the need to ensure the independence of the national institutions vis-a-vis all political authorities.

42. Mr. Maxwell Yalden, Chief Commissioner, Canadian Human Rights Commission, speaking as an expert, commented briefly on the rapporteur's statement and described the institution which he headed. In that context, he endorsed the rapporteur's view that it was the responsibility of the Government to ensure

respect for the rights of the individual, in particular where the State had contracted international obligations such as those contained in the various international human rights instruments. Consequently, the defenders of human rights must always strive to ensure that those commitments did not remain mere ineffectual declarations of intent. That was the justification for the existence of the national institutions.

43. The national institutions were of course necessary, but they must be vested with real authority, and sufficient powers to enable them to promote and protect human rights in practice. As to legal status, the method of appointment of its members, composition and its method of operation and referral, the Canadian Human Rights Commission met the criteria of independence of national institutions referred to by the rapporteur.

44. First of all regarding its legal status the Canadian Commission had been established on the basis of a Federal Act of 1977 (Canadian Human Rights Act). Both its responsibilities and its method of operation were laid down in that Act. Where there was no constitutional protection or no provision was made for such protection there were major advantages in having the status of a human rights commission defined and protected by legislation which could not be affected by political upheaval in the country concerned.

45. In Canada, there was both constitutional and legal protection for human rights. The Canadian Charter of Rights and Freedoms of 1982, which was constitutional in nature, encompassed fundamental rights such as freedom of expression and religion, the right to vote, habeas corpus, freedom of movement, the right not to be subjected to discriminatory practices, etc., which came under the jurisdiction of the courts. The Canadian Human Rights Act of 1977 referred more specifically to the right to equality and lay at the origin of the Canadian Commission, which was therefore responsible mainly for combating discrimination in all its forms. It should be added that the Human Rights Act had been adopted unanimously by Parliament and had been interpreted by the Canadian Courts, including the Supreme Court of Canada, as being "quasi-constitutional". The Act should therefore, in the words of the Supreme Court, be given a broad and liberal interpretation and took precedence over ordinary legislation.

46. Thus it could be said that, in Canada, the Constitution afforded the individual protection vis-à-vis the governments (both federal and provincial) and the administrative authorities, whereas the Canadian Human Rights Act protected him vis-à-vis not only those governments and authorities, but also the private sector in cases of discrimination. In other words, any individual who claimed to have suffered discrimination at the hands of a private enterprise governed by federal law could lodge a complaint with the Commission but not with a federal court.

47. With regard to the method of appointment of members and the duration of their mandate, the Canadian Act provided for a Commission composed of a Commissioner at its head and his deputy, who both worked full time together with six other part-time members. The two full-time members were responsible for the management and administration of the Commission. All the members of the Commission met once a month to hear any complaints that had been lodged and to decide on action to be taken on them.

48. The members of the Commission were appointed by the Governor General in Council on the nomination of the Prime Minister. The two full-time members were appointed for seven years and the six part-time members for three. The mandates of both groups were renewable. Unless they committed a serious offence, the members of the Commission could not be dismissed and in every case they could only be dismissed by means of a resolution of the House of Commons and the Senate, which would be an unprecedented occurrence. He suggested that the permanent members of a national commission should be given the longest possible mandates, especially if they held very senior posts, since that tended to give them greater independence.

49. Concerning operational resources, the budget was voted by Parliament, but that in no way affected the independence of the Commission.

50. In its operation, the Commission was particularly geared towards applying the principles of non-discrimination established by the Act. The purpose of the Act was "to extend the present laws in Canada to give effect, within the purview of matters coming within the legislative authority of the Parliament of Canada, to the following principle:

(a) every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex or marital status, or conviction for an offence for which a pardon has been granted or by discriminatory employment practices based on physical handicap".

51. According to its referral system, the Commission could receive complaints from an individual or group of individuals or could itself lodge a complaint if it considered that it was fully justified in doing so. The complaint would then be examined and a report made to the Commission. If the latter deemed the complaint justified, a conciliation process would be initiated during which a conciliator appointed by the Commission would try to conciliate the two parties. The outcome of the conciliation could be the payment of back wages if the complainant had been unjustly dismissed, or the granting of promotion or perhaps the payment of damages. If the conciliation effort was not successful, the Commisson would be called upon either to desist from handling the case on the ground that the result to be achieved was contrary to the intended purpose or to appoint a tribunal of three which would reach a decision after hearing the parties and the witnesses. The decision of that tribunal had the force of law and was as binding as that of a regular court. The complainant or the defendant could appeal against the decision to the regular courts, The Federal Court of Appeal and, ultimately, the Supreme Court.

52. The Commission received between 50,000 and 55,000 complaints a year and processed 1,500 to 2,000 of these, because its financial and human resources did not allow it to do more. Some of the complaints were withdrawn before being considered after an amicable agreement had been reached.

53. The duties of the Canadian Commission also included the promotion of human rights. To that end, it was empowered to develop programmes to enhance public awareness and understanding of the importance of human rights and of anti-discrimination legislation, to pursue research and to maintain relations with similar bodies elsewhere.

54. The Commission was also responsible for submitting reports and making recommendations concerning human rights to the Government and Parliament. It studied administrative and other regulations with a view to amending them if necessary. And under its mandate, the general terms of which were laid down by law, it endeavoured to discourage any discriminatory practice through persuasion, publicity or any other appropriate means.

55. Ultimately, thanks to its powers and the method of appointment of its members, which were clearly defined by law, and thanks to the financial, material and human resources placed at its disposal, the Commission was able to carry out its tasks with full independence, and had to date been treated in that spirit by successive Governments. The Commission had not hesitated to criticize the governments in office and bring actions against them whenever necessary. That was particularly evident with regard to employment and remuneration, to which the Commission paid close attention to ensure that racial minorities, indigenous populations, disabled persons and women enjoyed equality of opportunity and treatment in employment.

56. Mrs. Margaret Mulgan (New Zealand Human Rights Commission) stated that the institution for which she was responsible bore many similarities to the Canadian Commission. It had been established by an Act of 1977 with a view to promoting human rights in accordance with the United Nations Covenants and Conventions on human rights. It was therefore responsible for safeguarding human rights in general and combating all forms of discrimination in particular.

57. The Commission was empowered to receive individual complaints and, if necessary, bring cases before the Equal Opportunities Tribunal, whose decisions had the force of law. The members of the Commission were appointed by the Governor-General in Council, on the recommendation of the Ministry of Justice, for a renewable five-year term.

58. The independence of the New Zealand Commission was guaranteed by what could be termed as "technical" pluralism. It comprised seven members: the conciliator for race relations and the ombudsman were ex officio members, along with three full-time and two part-time members. There were at present four women members. Parliament was in the process of examining a bill for the appointment of another commissioner responsible for protecting the privacy of citizens.

59. Mr. Tovar Tamayo, Vice President of the Inter-American Court of Human Rights, referring to the system for the protection of human rights in Venezuela, stated that considerable changes had been made with the enactment of the 1961 Constitution. Since then, all rights regarded as fundamental (in particular, rights of the person), had been guaranteed by the Constitution, without need for them to be specified in separate legislation and for the first time the right of amparo and habeas corpus had been established. That

meant that human rights violations had become an offence which came within the jurisdiction of the criminal courts. For that reason, the Venezuelan Parliament had had to pass legislation on human rights.

60. In Venezuela the activities of three institutions overlapped. Those were: the Procuraduría general de la República (Office of the Procurator-General of the Republic), the Ministerio Público (Government Procurator's Department), which included the Fiscal General de la República (Attorney-General of the Republic), and the Defensor de los derechos humanos (Guardian of Human Rights), who dealt mainly with prisoners. The constitutional reforms under way aimed at separating those institutions so as to have through the institution of the Defensor del Pueblo (Defender of the People), an autonomous system specifically devoted to the protection of human rights. He would be a public official appointed by the National Congress (following a two-thirds majority vote in the Senate and Chamber of Deputies) with the power to carry out investigations freely. He represented not a jurisdictional body, but an authority with powers of investigation and mediation, and submitted his conclusions to Congress for consideration. Consequently, contrary to what the rapporteur had said, the 400 government procurators and 800 lawyers of the Office of the Attorney-General of the Republic were not, strictly speaking, responsible for protecting human rights as such; that protection was rather the responsibility of the Guardian of Human Rights.

61. Mr. Badel Gonzalez (Attorney-General of the Republic of Venezuela) endorsed Mr. Tamayo's statement and went on to say that before the current constitutional reforms the Procurator-General of the Republic had, with full independence, provided adequate human rights protection in Venezuela. The current reforms were aimed at lightening his work load somewhat.

62. Mr. Jaime Castillo Velasco (Chilean Commission on Human Rights) said that there were several kinds of human rights commission in Chile. They included the Commission for which he was responsible and the Commission for Truth and Reconciliation, whose members had been appointed by the President to examine cases of human rights violations which had resulted in the death of the victims under the military regime. That Commission, in which he had participated, was made up of eight persons. It had submitted a detailed report condemning the human rights violations which had occurred under the military dictatorship. The President wielded no authority over any of the human rights commissions. Parliament, for its part, had set up two commissions, one attached to the Senate and the other to the Chamber of Deputies. A plan for the establishment of an ombudsman was also being examined in Parliament. There were, in addition, a number of non-governmental organizations, most of which had come into being under the dictatorship, and they included the Chilean Commission on Human Rights.

63. With regard to national commissions, Mr. Castillo considered that they should be answerable to the Executive, the Legislature or even the Judiciary. Ultimately, the Judiciary should be a true guardian of human rights, although that was not always the case in Latin America. With regard to the Executive, undoubtedly the national commission could also assist the Government in defending itself in cases where it had been unjustly accused. The commissions established by Parliament were extremely useful and totally independent, and could have a very important role to play.

64. The establishment of such organizations should reflect not so much the theory and text of the instruments setting them up, as the spirit in which they operated. Only on that condition could they defend human rights in practice because if political, legal or ideological considerations were given precedence, there was undoubtedly a danger that the way in which they operated might be one-sided.

65. Mr. Arthur Fletcher (President of the Commission on Civil Rights, United States of America) informed the workshop of a number of amendments made to the statutes of the Commission on Civil Rights. The Commission had been set up in 1957 at a time when African-Americans had been denied civil, political, economic and social rights. It was, therefore, thanks to their actions between 1948 and 1957, supported by non-governmental organizations such as the Urban League and the National Conference of Christians and Jews that the Government had been forced to set up the Commission to look into the problems which existed.

66. The Commission on Civil Rights was an independent, temporary and bipartisan organization established by Congress under the Civil Rights Act of 1957, and re-established under the Civil Rights Act of 1983. Its mandate was to investigate denials of constitutional rights on grounds of race, colour, sex, religion, age, disablement or national origin or in the administration of justice. It was also responsible for examining federal legislation and policies on discrimination or the denial of genuine legislative protection on grounds of race, colour, religion, etc. It was empowered to submit reports, conclusions or recommendations to Congress.

67. The composition of the Commission reflected sociological pluralism (eight members, of whom there were three African-Americans, four Europeans and one Asian, including two women and a blind person) as well as political pluralism (four Republicans, two Democrats and two independents).

68. The Commission had developed considerably with time and had reached a point where it currently employed 2,000 professional staff, whose area of responsibility covered the entire territory of the United States at the level of federated States, counties and cities where the Commission was represented. Each ministerial department also had sections responsible for civil rights, equality in employment and affirmative action.

69. He illustrated his statement with a series of reports prepared by the Commission on various situations involving racism, racial or sexual discrimination and the rights of specific minorities. The reports were mentioned in the annex to the present report.

70. Mr. André Braunschweig (French National Consultative Commission on Human Rights) emphasized the independence of the Consultative Commission, pointing out that it had been set up within the Prime Minister's Office to advise him on all matters concerning human rights. For that reason its members were appointed by the Prime Minister, but that in no way affected its independence, which was ensured by virtue of its composition. A certain sociological and political pluralism was taken into account when appointing members. Thus debates in the Commission were forthright and the Prime Minister either took account of or disregarded the advice given, which meant that the Commission felt it was able, on occasion, to influence decisions taken by the Government.

71. The Commission also had the right to take up a case without referring it to a higher authority, which tended to strengthen its independence since it could examine a particular question on its own initiative.

72. It did not replace either the judicial institutions which were responsible for finding solutions to cases of human rights violations, particularly discrimination by individuals, or the bodies which made administrative decisions. Furthermore, it did not encroach upon the powers of the Médiateur de la République.

73. Mr. Saïdou Agbantou (Chairman, Beninese Commission on Human Rights) emphasized the originality of the Beninese institution in comparison with other national institutions. The Commission had been set up under an Act but had the status of a non-governmental organization. Important prerogatives were accordingly available to it in carrying out its mission. One such prerogative gave the Commission the right to begin flagrante delicto proceedings against any person who obstructed its inquiries. A further prerogative concerned the judicial immunity enjoyed by its members in the performance of their functions. Members were freely appointed by the Commission itself.

74. The Commission could institute a civil action in the courts. Its independence made it the supreme human rights organization in the land. It was totally independent of the Executive, to which it made suggestions, as necessary, concerning the ratification of international human rights instruments and respect for national legislation.

75. Mr. Mohamed Larbi el Majboud (Moroccan Advisory Council on Human Rights) stated that the establishment of the Moroccan Council represented a stage in one struggle for freedom and democracy being waged by his country, and in the action taken to promote human rights within the framework of the United Nations. The preamble to the Moroccan Constitution stipulated that being "Conscious of the need to inscribe its action within the framework of the international organizations of which it has become an active and dynamic member, the Kingdom of Morocco subscribes to the principles, rights and obligations arising out of the Charters of these organizations". Among other instruments, Morocco had ratified 18 Covenants and Conventions on human rights. The Advisory Council on Human Rights had been created by His Majesty King Hassan II with the aim of consolidating the State subject to the rule of law.

76. Established by Dahir (Royal Decree No. 1-90-12 of 20 April 1990), the Council was placed under the immediate authority of the King. Its members were also appointed by royal decree for a two-year term which could be renewed, and represented political parties, trade unions organizations, human rights associations, socio-professional organizations such as judicial, bar and medical associations, and university teachers. The Ministries of Justice, the Interior, Foreign Affairs, Cooperation and Information, and Islamic Affairs were also represented. In addition, it included eminent persons chosen for their human rights expertise and their high moral standing. The broadest possible cross-section of society thus worked together to carry out the common task. The Council was chaired by the first president of the Supreme Court.

77. Cases could come before the Council in two ways: firstly, the sovereign could request advice on general questions or clarification on specific issues; secondly, the Council could, following a two-thirds majority vote, take up an issue on which it intended to express an opinion to the King.

78. Mrs. Margarita Retuerto-Buades (Representative of the Defensor del Pueblo, Spain), briefly outlined the main characteristics of the institution she represented and referred all persons interested in finding out further details to the document she had distributed (see annex VI). The Office of the Defensor del Pueblo was the most recent institution set up by the Constitution of 1978. His basic role was to safeguard and promote human rights in Spain.

79. The Spanish Constitution set forth a wide range of rights and freedoms, respect for which was guaranteed by the Defen or del Pueblo, who was a sort of ombudsman, in conjunction with the jurisdictional bodies. His mission was twofold: to defend fundamental rights and to monitor the public authorities.

80. The institution of the Defensor del Pueblo was constitutional in nature, but independent by virtue of its legal status. Although established by Parliament, it could be regarded as a higher body ("es un alto parlamentario, es alto comisionado de las Cortes Generales"). It was, therefore, a parliamentary institution, but it had no binding mandate. Its independence was clear from the fact that it could initiate action on grounds of the unconstitutionality of a law enacted by Parliament. One of the characteristics strengthening its independence was the fact that its mandate was five years, which was one year longer than the parliamentary term. The Defensor del Pueblo was free from arrest and legal proceedings and enjoyed parliamentary immunity. Although it was a personalized institution, the Defensor del Pueblo had two assistants.

81. Mr. Rolando de León Cuéllar (Representative of the Guatemalan Procurator for Human Rights) said that after 30 years under fraudulently elected Governments and after so many coups d'état, the Constituent Assembly of Guatemala had in 1985 adopted a Constitution which had enabled a Constitutional Court to be established and a Procurator for Human Rights to be appointed. The Procurator for Human Rights constituted an essential institution in the democratic process which had been started in Guatemala. His role was similar to that of the Defensor del Pueblo in Spain. He was appointed by the Congress of the Republic after being nominated by its Commission on Human Rights, and his powers were granted under the Constitution. He was competent to examine all complaints brought before him and to undertake the necessary inquiries, with a view to demanding suitable legal punishment before the courts. Complaints were made against public institutions and officials and against private individuals. He was also entitled to apply for amparo and to initiate action on the grounds of unconstitutionality. He was independent of both the Government and Congress although, under the Constitution, he seemed institutionally linked to Congress as he was financed by it.

82. The Procurator for Human Rights was particularly concerned to denounce human rights violations committed by the military, including the infamous Santiago Atitlán massacre in which army general staff had been involved, and had been actively trying to ensure that those responsible did not go

unpunished. The current Government was itself engaged in the struggle for respect for human rights and was anxious to put an end to impunity in Guatemala.

83. Mr. Ahlonko R. Dovi (President, Togolese National Commission on Human Rights) referred to the case of Togo, where the Commission on Human Rights had been established by law; all members were elected and it was formally vested with the broadest possible independence because it was believed that the independence of national commissions, particularly in relation to the Executive, should not simply be alluded to in legal texts, which all too often obscured the truth. An overriding consideration, therefore, was the moral integrity of the members of such commissions, and particularly that of their presidents, in order to prevent power being used for ends which were at variance with human rights.

84. With regard to Togo, the successive presidents of the Commission had taken their mission seriously and the Commission had accordingly played a fundamental role in the ongoing democratic process.

85. Mr. Akin Gonen (Human Rights Commission of the National Assembly of Turkey) said that the Commission had been set up by an Act of 1990. It comprised members of the Assembly, who enjoyed parliamentary immunity. He corrected the rapporteur's observation that there was a link between the Commission and the Council of Ministers: the Commission was completely independent and had no institutional link with the Government. Quite the contrary, it was responsible for monitoring the actions of the Executive on behalf of Parliament. Furthermore, pursuant to the Constitution, Members of Parliament could in no circumstances undertake missions on behalf of the Government.

86. Parliament provided the Commission with premises, funds and the necessary personnel. Any individual or organization could bring any human rights issue before the Commission. Its members could also include on its agenda any questions they considered worthy of consideration.

87. The Commission could if necessary establish provincial subcommissions to carry out investigations and to undertake studies at any place and time. In principle its meetings were open to the public and to the press. Its decisions were transmitted through the Office of the President of the National Assembly to the relevant administrative or judicial bodies for implementation, and if necessary, its reports were brought to the attention of Parliament in plenary session. The findings of its investigations were also transmitted to the complainants. The Commission could propose draft legislation to the various parliamentary commissions in order to improve the human rights situation in Turkey. The Commission's effectiveness depended not only on the legal framework, but also on the support of public opinion.

88. Mr. Zakaria Ben Mustapha (Tunisian Higher Committee on Human Rights and Fundamental Freedoms) said that the Committee had been established on 7 January 1991 by the President of the Republic to assist him in his efforts to consolidate and promote human rights and fundamental freedoms. The Committee submitted to the President its views on matters which he brought to

its attention. However, its role was not merely consultative, as it could address any matter on which it wished to express an opinion. It also carried out studies and research in the human rights field.

89. The Committee comprised 27 members: 10 eminent national figures of recognized competence and experience in the human rights field, 8 eminent members of non-governmental organizations, and 9 representatives of ministries who were not entitled to vote. It met twice a year and could hold extraordinary sessions if necessary, being convened by its Chairman or at the request of one third of its voting members. It prepared an annual report, which it submitted to the President of the Republic. The Committee's expenditure was met by the Office of the President.

90. Mr. Rachid Driss, President of the Committee, pointed out that in spite of its close links with the Office of the President, the Committee's effective independence was reflected in its objectives and guaranteed by the eminent persons who made up its membership. In general they had completed their professional careers and worked free of charge.

91. In principle, the Committee was not authorized to accept individual complaints, but that did not prevent it from constantly receiving individual applications. For that reason, it was planning to request an extension of its powers in order to be able to deal with such cases. One of its recent actions had been an investigation into the situation of detainees, in the course of which some 100 disturbing cases had been resolved.

92. Mr. Léo Matarasso (International League for the Rights and Liberation of Peoples), speaking on the question of the independence of national institutions, said that the prerequisite for such independence was that any views expressed and recommendations made by them, either to the Executive or to the Legislature, should be made public. That requirement should be guaranteed by their constituent instruments.

93. Mr. William O'Neill (Lawyers' Committee for Human Rights) said that there was a link between the independence of the Judiciary and the independence of national human rights commissions. In his view, the greater the independence of magistrates and lawyers, the more independent national institutions would be and the fewer the number of cases to be dealt with.

94. Mr. Jacques Bourgaux (International Association of Democratic Lawyers) considered that, in spite of the great increase in human rights commissions, there was no cause for complacency in view of the fact that those States which had signed the various human rights conventions many years before were not always best able to safeguard human rights. It should accordingly be asked whether the stage had already been reached where the establishment of a commission was taken for granted or was regarded as a necessity or a step forward in all societies. It must, on the other hand, be recognized that the sine qua non for such an institution to exist was respect for the rule of law, under which the institution would coexist with non-governmental organizations, which he described as "intellectual agitators". Once that prerequisite had been met, care would have to be taken to safeguard the independence of the institution vis-à-vis the various branches of authority.

95. The Commission should be a forum which developed priority subjects for civil society. It should, if necessary, speak for the non-governmental organizations which, by definition, were weak for financial reasons. It should also act as a liaison centre for widely-scattered initiatives. Lastly, in extreme situations, it should have the authority to denounce.

96. In all cases, care should be taken to ensure that the State was not exclusively responsible for protecting human rights, because there was an almost universal tendency for it to violate them. In addition, the courts should fully perform their mission, and regional human rights institutions such as the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights should be activated so as to provide judicial remedies when the domestic situation in States made it impossible for individuals to vindicate for their rights.

97. Mrs. Mary Concepción Bautista (Philippine Commission on Human Rights) provided a detailed and comprehensive description of the progress made in the field of human rights by the Philippines, under the guidance of its Commission on Human Rights since the fall of the dictatorship.

98. Thanks to its independent and constitutional nature, the Commission was able to operate beyond the aegis of the Office of the President of the Republic, Congress and the Judiciary. Its functions included investigating cases of human rights violations and monitoring compliance by the Government with its obligations under the international instruments it had ratified. It also provided protection and legal assistance to the most disadvantaged strata of society, and financial and medical aid to the victims of human rights violations, including detainees, who were regularly visited by its members.

99. The Commission submitted bills to Congress. Its instigative role involved organizing seminars and workshops on human rights, in conjunction with the United Nations Centre for Human Rights, for the benefit of army and police personnel. A fundamental reform had been the separation of the army from the police. Thanks to the joint efforts of the Commission, the Civil and Political Rights Committee of the Lower House of Congress and a number of non-governmental organizations, a code of human rights would very shortly be submitted to Congress.

100. As far as the Commission's independence was concerned, Mrs. Bautista informed the participants of a conflict between the Commission and the Philippine Congress. When the Commission had refused to comply with an order by Congress calling on its members to appear before it for confirmation of their appointments, Mrs. Bautista, who at the time had been President of the Commission, had been dismissed. However, after the matter had been brought before the Supreme Court, the Court had ruled that under the Constitution the Commission was an independent body with a broad mandate that enabled it to investigate human rights violations by officials and whose members, once appointed by the Office of the President, did not need to have their appointments confirmed by Congress.

101. The Philippine Commission was composed of five members appointed for a non-renewable five-year term. It was currently presided over by the speaker, who was a professional lawyer. The other members were a retired Military Court judge, another lawyer, a journalist and an activist from a non-governmental organization.

102. The Commission recruited its employees itself. It currently employed 800 people (including 100 or so lawyers and over 100 investigators) who worked in 12 regional offices located throughout the country. It had freely drawn up its rules of procedure and it determined those cases of human rights violations that came within its mandate. They essentially concerned violations of the civil and political rights recognized by the Bill of Human Rights incorporated in the Constitution, and violations of all the constitutional provisions relating to the rights of the poor, children, women and workers. The Commission's powers also extended to the implementation of the treaties and conventions to which the Philippines was a party and which, pursuant to the Constitution, were considered to be part of domestic law. It was funded be the State budget through Congress.

103. In the exercise of its powers and pursuant to its prerogatives, the Commission heard individual complaints. It could also take up a case of its own accord if it heard of it through publications, anonymous letters, local or international non-governmental organizations or even communiqués signed by United Nations committees. Complainants were interviewed at home or elsewhere if, for particular reasons such as lack of funds or fear of reprisals or identification as witnesses or complainants, they could not be, or did not wish to be, seen contacting the Commission. As the purpose of the investigation was to prosecute those responsible for human rights violations, in accordance with the Commission's rules, a letter had to be signed by the complainant(s) and suspects had to be given a copy of such letters in order to defend themselves. After its hearing, the Commission took a decision and, if it found that there had been a violation of human rights, it transmitted the case to the Justice Department in order that it might be brought before the courts. The Commission's regional offices followed the same procedure, although they were not authorized to reject any complaint of a human rights violation without the approval of the central office. The Commission had so far transmitted more than 1,800 cases to the various courts, and its records showed that human rights violations were on the decline.

104. The Commission was authorized to question senior officials and members of the Government if they were concerned by complaints. Thus, the Minister of Defence, the Chief of the Army's General Staff and the Chief of the National Police and lower-ranking officers had appeared before the Commission subsequent to complaints by non-governmental organizations, trade unions or political parties. Similarly, the Commission was empowered to prosecute for obstruction of justice anyone who refused to comply with its decisions.

105. Under its constitutional mandate as implemented by a memorandum of understanding on the treatment of detainees, which it had entered into with the Minister of Defence, the Minister of Justice, the Chief of the Army's General Staff and the Chief of Police, the Commission, jurists, doctors, investigators and persons working with it had the right of immediate access to all military camps, detention camps, police stations and prisons in order to ensure that detainees were being held in conformity with the law.

106. The dialogue and cooperation between the Commission, the military authorities and civilian leaders had led to improved protection and greater respect for human rights in the Philippines. That achievement was apparent in various memoranda and instructions relating to arrests, detentions, the treatment of prisoners, unlawful arrests, torture, enforced disappearances and summary executions, which had considerably diminished.

107. With regard to the independence of the Judiciary as a prerequisite for the proper operation of a national human rights commission, she said that the previous system, which had allowed senators and representatives in Congress to influence the appointment of magistrates to the ordinary courts and even to the Supreme Court, had been abolished by the 1987 Constitution. Appointments were currently made by the Office of the President from a list of names recommended by the Judicial Council and the Bar.

108. The President of the Republic had recently appointed 200 judges, a majority of whom were women. Under the current law, procurators were required to bring to trial within 60 days any case submitted to them and, in order to receive their salary, judges had to demonstrate that no cases had been pending before them for more than 90 days.

109. The Supreme Court had dismissed those judges who had failed to carry out their mandate or who had proved corrupt. The Justice Department had also acted against those who had delayed decisions in certain cases.

110. The rights of the defence, the right to legal aid and the right to a lawyer were guaranteed by the Constitution. Persons unable to meet the cost of a trial were entitled to free legal aid from the Commission on Human Rights, the Bar Association, the legal aid offices of the Ministry of Justice and the legal aid associations which existed in the Philippines.

III. RELATIONS BETWEEN NATIONAL INSTITUTIONS AND OTHER PARTNERS

111. This topic was considered at the 2nd and 3rd meetings held on 8 October 1991.

112. In the absence of Mr. Adama Dieng (Secretary-General of the International Commission of Jurists), Mr. Malamine Kourouma, who had been appointed rapporteur, introduced the subject on the basis of the background paper prepared by Mr. Dieng.

A. The partners of national institutions

113. Mr. Kourouma began by identifying the main partners with which national institutions were called upon to cooperate. They were non-State institutions or, to use the words of Mr. H. Dieng, institutions which were on the borderline of or outside the State institutional sphere, including Parliament, non-governmental organizations, trade unions or other vocational associations, religious institutions, academic institutions, the media, and regional and international intergovernmental institutions.

114. The parliamentary representatives participating in the national institutions for the promotion and protection of human rights brought with them their experience in legislation. Furthermore through their participation they could influence Parliament on a particular bill referred to it on the recommendation of the institution.

115. As to the network of non-governmental organizations, legal associations (bar associations, associations for the rule of law, associations specializing in the various aspects of law, judges' associations, etc.), trade unions, other vocational organizations and the media, they all represented institutions of civil society which played a protest role essential in ensuring the effective protection of human rights.

116. The cooperation between journalists, the media and the national commissions could help to improve the quality of information which was of great educational value.

117. The participation of representatives of the religious authorities in bodies for the promotion and protection of human rights was all the more likely since all religions today proclaimed their support for the doctrine of the protection of human rights.

B. Relations with the various partners: a partnership based on identity of purpose and complementarity of function

118. After enumerating the main partners of the national institutions, the rapporteur addressed the question of the type of partnership they could establish. In his view, the relations between national institutions and their non-State partners were based on the fact that they had the same purpose and that their functions were complementary.

119. This identity of purpose lay in their common acceptance of the rule of law, which implied:

(a) Respect for the individual, whose autonomy, security, integrity and fundamental rights - civil, economic and social - were protected;

(b) The hierarchy of legal provisions, characterized by the supremacy of the Constitution, the supervision of the constitutionality of the laws and the existence of independent courts;

(c) The legitimacy which the public authority derived from the establishment of democratic, pluralistic institutions based on representativeness, participation by the people and decentralization;

(d) The autonomy and independence of civilian society and its institutions;

(e) The rejection of any form of theocratic power;

(f) The subordination of the armed forces and the security forces to the constitutional authorities.

120. That joint acceptance of the primacy of law and the implications of the State subject to the rule of law obliged the networks of institutions, the political parties, the trade unions and the media to confine themselves to counterbalancing functions, while abiding by the law. It was only on that basis that the regulatory mechanisms and procedures could be put into operation.

121. The identity of purpose which underlay the relations between the national institutions and their partners also implied a common belief in the need to bring the provisions of positive national law into line with the international legal provisions, such as those set forth and implemented in the international human rights conventions and covenants.

122. The ratification of those instruments, their official publication by the States parties, the fact that they were effectively taken into consideration in national legislation and the honest acceptance of the supervision and monitoring procedures which they advocated constituted, for national human rights institutions and for all their partners, an important component of the identity of purpose on which they must base their cooperation.

123. The complementarity function was reflected first of all in the pedagogical activity which national institutions and non-State partners undertook jointly in order to inform private individuals of their rights and duties. That educational activity should be envisaged at all levels of the education system, and also outside school and university (businesses, village communities, trade unions, media, etc.).

124. In connection with that complementarity of function as educators of public opinion, the United Nations and UNESCO had in recent years greatly increased the number of meetings and seminars, whose work and conclusions served as benchmarks for the educational institutions, of course, but also for the national commissions and all their partners.

125. There were myriad possibilities for cooperation in that sphere at the national, regional and international levels, and the national commissions could serve as effective focal points for initiatives within the United Nations to disseminate information on the work of the United Nations Centre for Human Rights and UNESCO in that field.

126. The complementarity of function between the national institutions and their various partners extended also to the following regulatory procedures carried out by the institutions.

(a) Missions to inquire into abuses of authority and infringements of human rights;

(b) Friendly approaches to government authorities to help find solutions to individual or collective cases;

(c) Legislative consultations and discussions on the establishment of standards;

(d) Contribution to the quantitative and qualitative improvement of cooperation between States and the regional or international organizations in the protection of human rights. Through complementary action the national institutions and the partners should seek, in particular, to ensure that international provisions were effectively applied and that they were reflected in national legislation.

127. Despite that complementarity of function, Mr. Kourouma felt that the national institutions should not act as a substitute for the non-governmental organizations. The national institutions and the non-governmental organizations must preserve their independence and their cooperation must be a source of mutual synergism, the expansion of the activities of the NGOs must not result in a reduction of the activities of the national institutions.

128. To sum up, relations between the national institutions and their partners must be based on continuing and sustained consultation, with due regard for the specific characteristics of each party, with a view to the promotion and harmonious and effective protection of human rights.

C. General debate

129. Mrs. Bautista said that there was good cooperation between the Philippine Commission on Human Rights and the non-governmental organizations, particularly with regard to the submission and examination of complaints. The Commission had also embarked on a dialogue with the NGOs, other civil institutions and the members of minorities and vulnerable groups.

130. In the opinion of Mr. Khemais Chamari (International Commission of Jurists), despite the efforts made by the Centre for Human Rights to promote the creation of, or consolidate, national institutions, in the present circumstances those institutions were not receiving the enthusiastic support of the networks of non-governmental organizations in the area of human rights, either in the North or in the South, and particularly in the South. The first reason for this was that the States could not be relied on completely to promote and project human rights, and the second was that several institutions which had come into being in a political context still characterized practices typical of a monolithic or authoritarian power were regarded as conscience-salving institutions.

131. Consequently, it was through a combination of the criteria of independence mentioned by Mr. Turpin (see chap. I) concerning legal status, composition and operation, and terms of reference highlighted in the paper submitted by Mr. Dieng (reference to the State subject to the rule of law and to the principles and standards of social justice) that the position of the national institutions in the area of the promotion and protection of human rights could be clarified and their various partners reassured. It was incumbent on the national institutions and the States which promoted them to give assurances so that various associations, the media, the moral and religious authorities, etc. felt that they were involved in the establishment and development of that type of institution.

132. The establishment of national institutions should not entail the demise of the non-governmental organizations. Specific consideration should be given to the sharing of roles between national institutions and NGOs, so that the latter could continue to act as staging-posts for complaints to the national institutions. There was a danger that, by directly submitting their complaints to a body which had the advantage of being protected by the Executive, citizens might neglect the NGOs and reduce their role simply to that of an outlet for protest.

133. Emphasis had also been placed on the universal nature of the principles of human rights to which the non-governmental organizations and the national institutions referred. The human rights charters, conventions and covenants had been drafted after a process of study and consultation among countries from every continent. Those legal instruments were not therefore the exclusive product of any particular area of civilization, but rather the expression of an intercultural consensus. It was by endorsing that universalist concept of human rights that the struggle against the arbitrary acts of repression against all forms of backwardness, exclusion, fanaticism and intolerance could be combated. The same applied to the rights of women and to the rights of religious, ethnic or linguistic minorities.

134. Mr. Saidou Agbantou (Beninese Commission on Human Rights) said that since the concept of the "duty of interference" for humanitarian reasons was the logical outcome of the universality of human rights, it should be established in international law. In his view, it had become unacceptable that, under the pretext of the concept of non-interference in the internal affairs of States, human rights should be violated by some States.

135. In the same context, Mr. Emma Ezeazu (Civil Rights Liberties, Nigeria) stated that the current tendency to set up national commissions for the promotion and protection of human rights did not by any means reflect any kind of improvement in the human rights situation in many countries, at least if one were to judge from the content of the reports of the main non-governmental human rights organizations. What was there to say about situations where single-party dictatorships or military dictatorships were still in power. What should be the status of a human rights commission under a military regime? There was no denying the fundamental contradiction between a country's domination by a single party or the army and the promotion and protection of human rights, and that inevitably affected the functioning of a national human rights commission. What, then, were the requirements today for the establishment of a national institution for the promotion and protection of human rights in countries ruled by a military dictatorship or a single party? Should one encourage the establishment of national institutions which were doomed to be ineffectual? Or, on the contrary, should one strengthen the non-governmental organizations and endeavour to ensure the independence of the Judiciary and support the press in countries where democracy and the rule of law had not yet become a reality?

136. Regarding the newly emerging democracies, the non-governmental organizations themselves should be very cautious about participating in the commissions set up by the Government lest they weaken the cause of human rights and unthinkingly give the Government credit it did not deserve. Any ambiguity between the NGOs and national institutions should be avoided.

137. Ms. Fabienne Rousso-Lenoir (International Federation for Human Rights) considered that, before pursuing the discussion, a clear distinction should be made between jurisdictional institutions, quasi-jurisdictional institutions, and non-jurisdictional and promotional institutions. That distinction was all the more necessary as those various types of institutions could not have the same institutional provisions, the same supervisory authorities or the same composition and did not therefore serve the same purposes. She therefore suggested that the United Nations should make a comparative study of the existing national institutions in order to determine criteria which could become common denominators for use by the national commissions, with a view to the universal promotion and protection of human rights.

138. As to the requirement that the existence of the rule of law should be a precondition for the establishment of a human rights commission in a particular country, that should not be an inflexible condition. Account must in fact be taken of the fact that the national commissions could lead the way or act as a driving force in the establishment of the rule of law.

139. Mr. J. Castillo Velasco (Chilean Commission on Human Rights) considered that the relationships between the national institutions and other partners, such as non-governmental organizations, varied depending on whether the regime in question was a dictatorship or a democracy. Under a dictatorship, the human rights organization must have the authority, energy and courage to oppose both the dictatorship and all the institutions which were derived from or linked to it. When the dictatorship had gone and democracy emerged, the human rights organizations must change their approach and cooperate in the establishment of institutions designed to strengthen that democracy. The struggle was not against the State as such, but against those political regimes which oppressed the individual. Consequently, when democracy was respected, relations between the national institutions and, for example, the bar, the trade unions or NGOs were less characterized by conflict, even if they did not imply any submissiveness on the part of the various partners vis-à-vis the power of the State. That kind of cooperation could sometimes be difficult to achieve, because a dictatorship left important after-effects and violations of human rights could continue.

140. Mr. Zien (Advisory Council on Human Rights, Kingdom of Morocco) said that while it was legitimate for the advocates of the promotion and protection of human rights to want the rule of law to be established in every country, it should be borne in mind that the perfect rule of law did not exist anywhere and that the rule of law was a constant quest.

141. Regarding the composition of national institutions, it was not, in his view, a good idea for parliamentary representatives to be members, because not all the political parties were represented in Parliament, especially when the State was not subject to the rule of law. It was better for the political parties to be represented on the national institutions, as in Morocco than for parliamentary representatives to be appointed as members. However, the presence of members of the Government or their representatives in the national institutions would be positive to the extent that it promoted a constructive dialogue on the Government's human rights policy. The refusal of some NGOs to take part in the national institutions on the pretext that they did not wish to give moral endorsement to the Government could be attributed to their

desire to be circumspect but such circumspection should not lead them to criticize the motives of those national institutions. Lastly, in addition to the criterion of independence which should underlie the establishment of national institutions, he proposed that account should be taken of the criterion of effectiveness. Seen from that standpoint, the advisory nature of an institution did not, in his view, necessarily weaken that effectiveness considering that a Head of State or Government could hardly disregard the advice and recommendations of a body which, through its sociological and political pluralism, had some measure of moral authority.

142. Mr. Sasson (Moroccan Advisory Council on Human Rights) said that if non-governmental organizations were to be encouraged to participate in the work of national institutions, that was not because the importance of their role was being questioned. Rather, at a time when a spirit of openness was prevailing and all types of dogmatism were collapsing, the NGOs' participation would help replace suspicion and condemnation by dialogue in the field of human rights, which was so crucial to all nations.

143. Mr. Maxwell Yalden described the ongoing interaction in Canada between the network of non-governmental human rights organizations, racial or ethnic minority organizations, vulnerable persons' (women, disabled) organizations, religious organizations, the bar and the Human Rights Commission. Most of those organizations were entirely or partly financed by public funds. They existed both at the province level and at the national level. Certain international NGOs such as Amnesty International and the International Federation for Human Rights were well represented in Canada. In one way or another, NGOs such as those he had mentioned lobbied the Canadian Commission and also dealt with arbitration. Certain NGOs even appeared before the Commission on occasion. Without such pressure from those organizations, the Commission would probably be less effective. And no single element in the field of human rights protection could work efficiently in isolation from the others.

144. Mr. Brian Burdekin (Australian Human Rights Commission) said that the credibility of a national institution depended on its ability to move among the various protagonists in the field of the promotion and protection of human rights and to establish close and harmonious cooperation with them, whether they were on or outside of the international stage, rather than isolate itself from them. If such relations did not exist, the national institution would not be as effective or efficient. From that point of view, national institutions could also provide a channel for transmitting to the various national partners information on human rights, in particular information produced in the United Nations or other international forums, to which they did not always have access. With regard to Australia, the Human Rights Commission had often received the firm support of the non-governmental organizations when it had been in disagreement with the Government on certain issues.

145. One example of cooperation between NGOs and the Australian Commission related to the Convention on the Rights of the Child. The Commission had regularly informed the NGOs concerned of the negotiations on the Convention taking place at Geneva, and it might be claimed that the Convention's ratification by the Government despite the fears it had aroused in certain political quarters had been due to the joint efforts of the NGOs and the Commission.

146. Mr. Luis-Maria Olaso (Venezuelan Human Rights Commission) stated that non-governmental organizations in Venezuela played an important part in the defence of human rights in that, in accordance with article 72 of the Constitution, the State protected the organizations, corporations, companies and communities whose aim was the full development of the personality.

147. The President of the United States Commission on Civil Rights explained how it cooperated with citizens' organizations and how it had developed its infrastructure in order to fulfil its responsibilities. The reason why the Commission had maintained its independence was that it was well established in the States of the Union and local communities, and maintained close relations with the population. Each State had an advisory committee affiliated to the Commission. Each of those grassroots committees was made up of 15 or more individuals working on a volunteer basis. They formed part of a federal body called the Conference on Civil Rights and worked in the field for the fair implementation of all relevant elements of the law (right to vote, right to education, right to work, right to housing, etc.) for all individuals, without distinction as to race, colour, sex or national or ethnic origin. Through their activities they monitored the Commission on an ongoing basis. Thanks to that infrastructure, significant changes had been made for the benefit of the ethnic minorities especially Afro-Americans.

148. In addition to that structured network of citizens' associations, the press also monitored the activities of the Commission closely and was in a position to pressure Congress to reduce the Commission's resources if it did not fulfil its mission properly.

149. Mr. Marc-André Eissem (European Court of Human Rights), referring to relations between national and regional institutions for the protection of human rights, said that if both the European Court of Human Rights and European Commission on Human Rights had had little contact with such institutions so far, that had been due to the basically jurisdictional nature of their powers. In the framework of the Council of Europe, both the Commission and the Court had links with national institutions for the protection and promotion of human rights, principally in the form of meetings between representatives of ombudsmen and mediators and representatives of the political and technical organs of the Council of Europe (Parliamentary Assembly, Committee of Ministers, secretariat, committees of governmental experts).

150. From the stand point of development of such cooperation, he noted that, under article 26 of the European Convention on Human Rights, matters could be dealt with by the Commission or the Court only after all domestic remedies had been exhausted. It might therefore be asked whether the filing of a suit with the Council of Europe institutions might in certain cases be made conditional on referral to a national commission for the protection or promotion of human rights. The answer would be negative, except in the (hypothetical) case where a commission was not only competent to try individual cases in response to a complaint from the persons concerned, but also had genuine decision-making power.

151. Article 25 of the European Commission on Human Rights, however, offered a more specific possibility. Under that article, the Commission could receive petitions from any person, non-governmental organization or group of

individuals. Thus national institutions might support petitions from the victims of alleged violations or perhaps even act as representatives or attorneys of the victims to the extent that their status under domestic law allowed.

152. A third possibility for cooperation between European and national institutions for the protection of human rights related to the procedure before the European Court. A national commission could request permission to file written observations with the Court as amicus or amica curiae (rule 37 of rules of court). That procedure had been used several times by certain non-governmental organizations such as Amnesty International, as well as trade unions and lawyers' associations.

153. Legislative reform bills being prepared in a State party to the Convention could be of great interest for the European Commission and European Court to the extent that they were public documents accessible to the Commission and the Court. Conversely, the case law of the Court and the Commission could be very useful to certain national commissions of the member States of the Council of Europe, or even of States outside the Council.

154. Consequently, the European Commission and European Court were partners, if not current and practising at least future and potential of the national institutions. Beyond the differences in nature and method, there were great similarities in a number of respects. The work was no doubt different, but complementary, and in both cases the national institutions, on the one hand, and the European Commission and European Court on the other, cooperated in the attainment of a single objective.

155. Mr. Ilhan Askin (Human Rights Inquiry Commission, Turkey) said that his country, which had acceded to the European Convention on Human Rights, recognized the competence of the European Commission and the European Court to consider complaints from Turkish citizens.

156. Mr. Fausto Pocar (Institute of International Law, University of Milan and Chairman of the United Nations Human Rights Committee) said that although it was for the State's internal bodies to implement international instruments and although such implementation, could only be guaranteed by international supervision it was obvious that the role national institutions could play in that respect was a crucial one. That role affected several areas. The first was the preparation of periodic reports for the bodies monitoring the international human rights instruments. Preparing those reports in cooperation with the international institutions could improve their quality, and it also enabled national institutions periodically to review their entire implementation of the international instruments at the national level. In addition, the opinions given by the national institutions on aligning national legislation with international standards were extremely valuable for the bodies monitoring international treaties and conventions. When individual complaints were received under international procedures, national institutions could provide valuable help in enforcing the decisions of the international forums.

157. Mr. Loïc Picard (International Labour Office) referred to the main feature of the International Labour Organisation (ILO), its tripartite

structure, involving representatives of workers, employers and Governments in a common search for social justice on an international basis. That common search was a particularly important component in ILO's prescriptive activity, from the adoption of standards to the monitoring of their implementation by the States that had ratified them.

158. The ILO also turned to the non-governmental organizations in consultative status with the Economic and Social Council, which sometimes joined the ILO's Commissions of Inquiry established under article 26 of its constitution.

159. The tripartite structure should also apply at the national level, and both workers' and employers' organizations should be able to take part in the work of the national institutions.

160. Mrs. Linda Allain (UNESCO National Commission, Canada) said that there were about 155 UNESCO national commissions throughout the world, which should lead to a natural partnership with the national institutions for the purpose of promoting and teaching human rights.

161. Mr. Oliver Jackman (Inter-American Commission on Human Rights), referring to the inter-American system, stated that democracy and the rule of law were essential conditions for the proper functioning of human rights protection systems. Without democracy, the situation of national institutions would certainly be precarious, whatever their legal status or composition.

162. Where national institutions did not fulfil their mission, regional and international institutions should offer adequate means of recourse. Thus the Inter-American Commission had received numerous petitions from victims of human rights violations in certain countries in Latin America. In some cases, the Commission's intervention had made it possible to assist individuals whose lives had been in danger.

163. Mr. Makbool Javaid (Commission for Racial Equality, United Kingdom) said that, in view of the limitations which might be imposed on national institutions, whether or not their existence was guaranteed by the Constitution, the development of regional institutions for the protection of human rights, on the lines of the European Court of Human Rights and European Commission on Human Rights, would seem to be one of the most effective ways of ensuring the protection of human rights. The fact that the members of regional institutions were nationals of the States parties to the Conventions that established them avoided the political limitations that might affect national institutions. Access to those regional institutions should be open to private individuals and non-governmental organizations.

164. Mr. Francisco Eguiguren Praeli (Andean Commission of Jurists) agreed with Mr. Jackman that democracy was the cornerstone on which every national human rights institution should be built. The Andean Commission of Jurists, as a non-governmental organization of a regional character, had the basic task of monitoring the human rights situation in the Andean countries (Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela). But given that background, it did not reject cooperation with governmental institutions entirely. It was non-governmental but not anti-governmental, which meant that it intended to cooperate with national institutions on points of common interest that would

enhance human rights in the region, while maintaining its autonomy. It also cooperated with the institutions in the inter-American system for the protection of human rights (Inter-American Commission and Court).

165. Mr. Paul Hunt (African Centre for Human Rights and Democracy) raised the problem of the disparity between the financial resources available to the national institutions of the Northern countries and those of the Southern countries for the purpose of carrying out their missions. If the countries of the North really wanted an improvement in the human rights situations in the countries of the South, they must provide financial assistance through the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the field of Human Rights. The European Community, in the framework of Lomé Convention No. IV, and the Commonwealth Secretariat or similar institutions could also serve as channels for international aid.

166. Mr. Hassib Ben Ammar (Arab Human Rights Institute, Tunis) said that the Institute's documentation and information centre, which had been equipped with the assistance of the Centre for Human Rights, had bibliographic data and very substantial information on various institutions and experts working in the human rights field which were disseminated throughout the Arab world. In the area of training, it organized courses designed to increase familiarity with the United Nations bodies and the national, regional and international mechanisms for the protection of human rights.

167. Mr. Teuvo Kallio (Secretary, Ministry of Justice of Finland) described human rights education in Finland, which was given primarily by the Finnish Institute for Human Rights. The Institute maintained close relations with the universities and the media, and organized regional courses (covering the Nordic countries) and international courses for students. One of its most remarkable achievements had been the Declaration on Minimum Humanitarian Principles, which had been adopted at a meeting of experts in 1990.

IV. JURISDICTION AND COMPETENCE OF NATIONAL INSTITUTIONS

168. This item was considered at the 4th and 5th meetings on 9 October. Mr. Brian Burdekin rapporteur for the topic, introduced it on the basis of the background paper he had prepared for participants.

169. Beyond the heterogeneous jurisdiction and competence vested in them, which derived from the specific legal traditions, constitutional frameworks and social and economic circumstances of each country, Mr. Burdekin endeavoured to identify those parameters that governed the operation of certain national institutions, which were suitable for adoption by other national institutions. He mentioned the conflicts of competence that might arise from the multiplicity of national institutions responsible for protecting human rights.

A. Domestic and/or international scope

170. In Mr. Burdekin's view, from the structural standpoint, one factor with considerable repercussions on the activities of national institutions striving to promote and protect human rights was whether there were several institutions with competence for a particular category of rights or discrimination or whether on the contrary, there was a single national commission with overall competence for human rights.

171. The powers of a number of national human rights institutions could be defined on the basis of exclusively domestic legislative provisions, whereas the competence of other national institutions was defined by reference to international human rights instruments to which the country was a party.

172. The Australian Commission, for example, was competent only in respect of the international instruments which had been incorporated into Australian legislation, although those instruments covered a very broad range of rights and it was planned to add further instruments.

173. In Canada, the Human Rights Commission had competence for a very wide range of forms of discrimination. It did not have direct competence for civil and political rights or for economic, social and cultural rights as such, but merely in so far as discrimination infringed those rights.

174. In New Zealand, the Human Rights Commission had competence for human rights in general and had expressly been given competence for discrimination on grounds of sex, marital status or religious or ethical beliefs. Competence for racial discrimination lay with the Race Relations Conciliator, who was a member of the Human Rights Commission, although his powers were established by a distinct charter and he possessed a specific status.

175. In the United Kingdom, the Equal Opportunity Commission was competent for gender-based discrimination and the Commission for Racial Equality dealt with racial discrimination. However, there was no national commission with overall competence for human rights.

176. On the basis of experience, the rapporteur considered that an integrated body dealing with human rights was in a number of respects, preferable to separate bodies dealing with the various forms of discrimination and other aspects of human rights.

177. Firstly, there were a number of advantages in giving national institutions a charter that was directly based on the international human rights instruments, which first of all served as a convenient point of reference by which the degree of domestic implementation of human rights could be assessed - both internally and externally.

178. Secondly, it facilitated the development of experience and jurisprudence in applying international standards which, though framed by reference to national conditions, could be applicable to other countries.

179. Thirdly, the fact that national institutions had a specific basis in international human rights instruments offered the particular benefit of making it possible to address cases that fell through gaps in domestic legal categories. It was clear, for example that common law systems although they contained important human rights elements, by themselves offered very inadequate protection of human rights, particularly concerning discrimination and the rights of especially disadvantaged groups (such as the mentally ill).

180. Fourthly, where an individual complaint was not resolved at the national level and came before international bodies such as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination or the Committee

against Torture (where the nation concerned had taken the requisite steps to make those procedures available), prior consideration of the matter by a national body on the basis of the same international standards was likely to be of considerable assistance to the international body concerned.

181. Fifthly, with respect to the reporting systems instituted under international instruments, a national institution dealing directly with the human rights instrument in question could be of great assistance to the Government concerned in compiling information to fulfil its reporting obligations.

182. A number of national commissions whose principal functions were domestic also had responsibility for providing advice to Governments on the whole range of international actions relating to human rights, in particular in relation to the negotiation and ratification of international instruments, as was, for example, the case of the New Zealand Human Rights Commission. As for the Australian Commission, within its general responsibilities it advised the Government on the negotiation and ratification of international instruments.

183. With regard to the participation of national institutions in international meetings, he considered that, while Governments clearly had the power to decide how they wished to be officially represented internationally, it was generally possible for the authorities to request that members of national commissions should serve as experts on government delegations to United Nations treaty-monitoring bodies. In certain cases, it was also possible for the members of national commissions usefully to serve as members of government delegations in the negotiation of international instruments.

184. Furthermore, following the example of some national commissions that had recently made an important contribution, as experts in their own right rather than on government delegations, to the discussions within international bodies on human rights matters, it would be appropriate for the United Nations to acknowledge the role of national commissions in an appropriate form.

B. Participation in the drafting of legislation

185. The rapporteur said that most national commissions, whether they were commissions that had been established by Parliament, independent commissions set up under the Constitution or by law, or institutions that operated within a department of the Executive, had the power to make recommendations for the introduction of new legislation or amendment of existing legislation to protect human rights. In the case of several institutions which included members of the Legislature or members appointed by the Legislature, that possibility might be one way in which the Legislature ensured that human rights received their proper place on the legislative agenda.

186. National commissions which were responsible for administering human rights legislation would often be in the best position to identify areas where the legislation required improvement, either because of technical defects, or because experience had indicated human rights problems which existing legislation did not adequately address. Where a national commission had power to conduct wide-ranging national inquiries and was directed to work with non-governmental organizations, its action provided a further basis for legislative recommendations.

187. The national commission could also be authorized to review legislation in any area affecting human rights. An important fact was to determine whether a national commission could initiate a recommendation for legislative action itself or only refer the matter to the authorities or to Parliament. For various reasons, Mr. Burdekin considered that the power to make recommendations was a major key to effectiveness in that sphere.

C. Quasi-judicial powers and mode of referral

188. The question whether national institutions had quasi-judicial powers in turn raised the question of their power to receive complaints, to invesitgate them and to make determinations.

189. Although in some countries institutions specifically responsible for human rights were mainly entrusted with informing the authorities of their views on general policy matters and legislation, it was generally agreed that one of the major tasks of a human rights commission was hearing complaints by individuals.

190. In some countries, an individual affected by discrimination or other human rights violation could complain not only on his or her own behalf, but also on behalf of others, similarly affected ("class action and representative complaint"). Such was the case in common-law countries (Australia, Canada and New Zealand, in particular).

191. The most vulnerable members of society might not be in a position to lodge a complaint or to authorize others to do so on their behalf because of the very circumstances which rendered them vulnerable: for example, persons detained incommunicado or people with severe physical, intellectual or psychiatric disabilities or whose legal capacity was limited. That situation was addressed by provisions allowing a number of national commissions to receive complaints from third parties or from non-governmental organizations (Canada, Togo). In certain cases, complaints made by trade unions were covered by specific provisions (Australia).

192. Specific provisions allowing third parties and non-governmental organizations to bring complaints were desirable in order to avoid technical arguments regarding who had "standing" to appeal. Where appeals were possible, it would also appear desirable that the complaint should not proceed if the person on whose behalf the complaint was made did not wish it to proceed.

193. A number of national human rights institutions had jurisdiction to initiate an investigation of possible cases of discrimination or other human rights abuses without needing to receive a formal complaint.

194. Some national institutions were specifically invested by the Constitution or by law with power to compel production of documents and evidence.

195. In Canada, powers to enter and search premises and require the production of evidence were vested in investigators and tribunals instituted under the Human Rights Act rather than in the Human Rights Commission itself. In Australia and Benin, the national commission itself had power to require production of documents and to compel the giving of evidence.

196. As regards power to make determinations, it was common for the charters of national human rights commissions to emphasize settlement of complaints wherever possible by conciliation, in particular complaints of discrimination.

197. However, where a solution could not be agreed by conciliation, the issue arose as to what determinative powers were available. Experience in dealing with discrimination cases in Australia had been that, where legally enforceable remedies were ultimately available, that contributed to the effectiveness of conciliation. The desire to avoid more formal legal proceedings gave parties an additional incentive to conciliate their dispute.

198. In a number of countries, the human rights Commission itself had no determinative powers, but could refer matters to the courts or to a specialized human rights or equal opportunity tribunal, as was the position, for example, under the New Zealand Human Rights Commission Act, which provided for an Equal Opportunities Tribunal.

199. Experience had indicated a number of advantages in having a specialist tribunal with binding or enforceable jurisdiction. Moreover, it had generally been recognized that where a specialist tribunal was created, its decisions should be reviewable by the Judiciary to ensure compliance with the law and equity towards all the parties. That role obviously provided an important reason for ensuring that judges were adequately trained in the principles of human rights law.

200. Several human rights institutions which lacked determinative powers but referred complaints to courts or tribunals could appear in the courts and tribunals in support of a complainant's case. The Canadian Human Rights Commission, for example, had such a function. The Australian Commission was also able to appear in court for the enforcement of Commission determinations. It also had the power to intervene in legal proceedings not confined to those brought under human rights legislation, in order to bring relevant principles of human rights law to the attention of the court. Exercise of that power was conditional on the leave of the court and (in a practical sense) on there being a basis in domestic law for the application of international human rights instruments.

D. Protection and promotion of human rights

201. Both national experience and the terms of the international human rights instruments clearly indicated that legislative measures alone were not adequate to guarantee the effective enjoyment of human rights. Other active measures of promotion and protection were also needed. In particular, it was necessary to ensure that effective and accessible remedies were available to translate the theoretical protection of the law into practice, and that human rights and the legislative machinery were familiar to the victims and potential victims of violations of rights, to government agencies, employers and others exercising significant power in society, and to the community generally. It was also important to promote consideration of human rights on a wider basis than simply that of individual violations and complaints: i.e. in legislation, in the administration and interpretation of the law, and in the formation of social policy.

202. National institutions were of major importance in promoting public awareness of human rights and generally had public education and information as an important function. A number of national institutions also placed particular emphasis on human rights training for government officials, including the police and the military. The Philippines Commission, for example, had done important work in that area.

203. The power to conduct public inquiries could also be a major factor in the role of human rights protection and promotion of national institutions. In that connection, the action of the Australian Commission was highly significant.

204. A problem in giving effect to economic and social rights in particular (but also in cases of discrimination) was that the issue might often be too wide to be addressed by an individual complaint. One of the most significant and innovative powers given to the Australian Commission was the power to conduct public inquiries. That power enabled the Commission to investigate and report on human rights problems of a more general nature. Typically, public inquiries by the Commission had involved taking oral evidence in public hearings (and confidentially where necessary), receiving written submissions from interested individuals, non-governmental organizations and government agencies, further research and analysis of the evidence in the light of relevant international human rights standards, and publication of a report with findings and recommendations, which was presented to Parliament.

205. Public inquiries on human rights issues had an important educational function, in addition to identifying human rights problems or abuses and recommending solutions. That power was particularly effective in dealing with situations which involved people who did not have the financial or social resources to lodge individual complaints.

E. Advisory jurisdiction or binding jurisdiction

206. A number of more specific human rights institutions appeared to have a purely advisory jurisdiction. The principal force of the recommendations of such institutions was the force of public opinion. For such institutions to be effective, therefore, it was important that their reports and recommendations should be made public and that the function should be independent of government control.

207. In several instances, national human rights institutions had binding jurisdiction in some areas (or had associated with them specialist tribunals which had binding jurisdiction) but advisory jurisdiction only in other respects. Commonly, there was a distinction between certain grounds of discrimination which were declared unlawful, and regarding which binding determinations could be made, and other human rights matters, regarding which advisory jurisdiction only was created. That was the position, for example, in New Zealand. In Australia, determinations under the Sex Discrimination Act and the Privacy Act were enforceable.

208. Power to make non-binding recommendations and experience gained in the operation of legislation on that basis could, in some instances, be useful as a transitional measure before the introduction of legislation providing for

enforceable remedies. That model allowed for a period to adjust practices. It could also be a means of ensuring that problems in the operation of legislation were discovered before enforceable legislation was introduced. In particular, it might be important to give judges some guidance in the interpretation of human rights law in cases where the Judiciary was not familiar with interpreting and applying statements of rights, and to give international law domestic application.

F. Conflicts of jurisdiction

209. In several countries there was both a national human rights commission or similar body with jurisdiction to receive complaints, and a judicially enforceable Bill of Rights. Where those jurisdictions overlapped, complainants might be expected to approach whichever institution appeared most likely to give the remedy desired, although, as discussed above, problems in effective access to the courts for members of disadvantaged groups (and indeed, in many countries, for all but a minority of the population) meant that the national commission might remain the only remedy effectively available.

210. As administrative bodies, national commissions established under human rights legislation were generally subject to the supervision of the courts, including in their interpretation of that legislation. However, in specific cases where commissions were not directly bound by a court decision, they might tend to take a broad approach based more on the purposes of the legislation, whereas courts (at least in common-law countries) might adhere more closely to stricter domestic rules of legal interpretation.

211. One area where conflicts might arise was in approaches to positive measures designed to promote equality for disadvantaged groups. In some cases, courts taking a formalist approach to discrimination law might regard those as constituting "reverse discrimination".

212. One interesting mechanism for ensuring that measures which were not in fact discriminatory were not struck down by a formalist approach to anti-discrimination law by the courts (without providing for excessively wide legislative exceptions) was the provision in the Australian Sex Discrimination Act for the Human Rights and Equal Opportunity Commission to grant exemptions from the provisions of the Act. That power was required to be exercised consistently with the purposes of the legislation and was subject to judicial review, so that it was not used to undermine the protection of the law against discrimination. The power to grant exemptions had also been relevant in avoiding misinterpretations of anti-discrimination law in industrial tribunals. In other countries, a similar purpose was served by provisions which allowed the human rights or anti-discrimination commission to certify that a measure or programme for the benefit of a disadvantaged group, or measures conforming to certain guidelines, were permissible.

213. In many cases where a human rights complaint was made against a government agency, it was possible for the matter to be dealt with either by the human rights commission or by the ombudsman, where both existed. In such cases, it was necessary for one agency to be able to refer complaints to another and for both agencies to maintain good communications. In Australia, areas where both the Human Rights Commission and the ombudsman had been involved had not caused conflicts of jurisdiction to any significant extent.

G. General debate

214. Speaking as an expert, Mrs. Rosario Green briefly described the development of the strategy for promoting and protecting human rights. Three stages were apparent in the process of transformation of national institutions for the protection of human rights and similar bodies. The first stage corresponded to the emergence, at the beginning of the nineteenth century, of the institution of the ombudsman in the Scandinavian countries. The second was the adoption of the Universal Declaration of Human Rights and the action taken by the United Nations to promote the establishment of national human rights commissions in order to disseminate the Declaration's principles. The third stage had begun at the beginning of the 1980s and had seen a dramatic increase in the number of national institutions for the promotion and protection of human rights, together with the emergence of a universal awareness of the need to respect human rights.

215. On the basis of the action of the Mexican National Commission on Human Rights, she described her country's experience in the promotion and protection of human rights. The Commission had been set up by Presidential Decree on 6 June 1990. It was a decentralized body within the Ministry of the Interior. In the light of the growing complexity of Mexican society and the development of political pluralism, the Commission had wanted to create a forum in which needs in the area of human rights could be expressed, so that they might be satisfied without excessive confrontation. It represented, so to speak, a conduit for relations between the State and citizens.

216. The Mexican National Commission acted as a form of ombudsman, although it had its specific characteristics attributable to the particular circumstances of Mexico. It was independent of any authority and pluralistic in its composition. It was headed by a former Supreme Court judge, who was currently a deputy in Parliament, although he did not belong to a political party. The Commission's Council consisted of representatives of civil society (representatives of NGOs, academics, representatives of the media) and a representative of the Church (a Jesuit). Its members were appointed by the President of the Republic.

217. The fact that the members of the Commission were appointed by the President in no way affected its independence, on account of the moral integrity of the persons chosen and the diversity of their backgrounds, or beliefs. In addition, the Commission had its own assets and budget.

218. According to its Charter, the Commission did not have competence regarding the merits of a case; for example, it did not have competence regarding labour law or the administration of the electoral process. However, it was competent if violence occurred in connection with elections or trade-union demonstrations. Consequently, it only dealt with complaints concerning human rights violations in the strict sense of the word.

219. In the previous 16 months, the Commission had received 4,000 complaints, in respect of which it had made more than 120 recommendations. Some complaints had been settled by mutual agreement and had not been the subject of recommendations. Although they were not binding, the recommendations carried considerable moral weight, given the fact that the Commission had by

law the power to investigate and could call for the punishment of persons guilty of human rights violations. Once the appropriate authorities had been seized of a case, they had 15 days in which to reply to the Commission. Recently, 77 officials guilty of human rights violations had received various forms of punishment, a fact which attested to the growth of the Comission's status from merely moral to binding. All of its recommendations were published in the Commission's monthly gazette and in the national press. Pursuant to its Charter, the Commission was authorized freely to conduct its investigations within government departments.

220. The Mexican Commission not only dealt with individual complaints, but was also responsible for all aspects of the prevention of human rights violations (studies and bills, mass dissemination of human rights standards). It had thus contributed to the reform of the Penal Code prohibiting the extortion of confessions through torture. Henceforth, no confession made under torture could be used as evidence by the courts. Only a statement made before the Government Procurator or the examining magistrate, or in the presence of the accused's lawyer, was valid as evidence.

221. The Commission could also express its opinion on the human rights Conventions and Covenants ratified by the Government of Mexico and reply to criticism by international non-governmental organizations regarding the human rights situation in Mexico.

222. In view of the huge task entailed by the dissemination and protection of human rights, the Mexican Commission was currently negotiating the revision of its Charter in order to break its institutional and physical link with the Ministry of the Interior (the Commission's premises were located within that Ministry). In short, it would like to be separate from the Administration and to have its own Organization Act so as to gain greater public credibility and greater freedom to propose legislative reforms. It would also like the appointment of its President, while being made by the Executive, to be ratified by the Senate, as was already the case with Supreme Court judges. The purpose of those changes was to vest in the Commission the powers of a genuine ombudsman.

223. Mr. Göran Melander (Raoul Wallenberg Institute, Sweden) supplemented Mrs. Green's statement by saying that Swedish experience had shown that in many respects it was of fundamental importance to base human rights policy on the provisions of the regional or international instruments. In addition, dissemination through the media of information on human rights was crucial.

224. As far as the role of national institutions was concerned, it should not overshadow, but rather tie in with, that of the international machinery for the protection of human rights, including that of the human rights monitoring bodies. One could, for example, take the view that the International Convention on the Elimination of All Forms of Racial Discrimination, which had hitherto been underused in certain areas, should also provide protection for minorities, as it dealt not only with racial discrimination, but also with discrimination on grounds of national or ethnic origin. It was thus regrettable that, of the more than 100 States that had ratified the Convention, only 14 recognized the competence of the Committee on the Elimination of Racial Discrimination to receive communications from

individuals, in accordance with article 14 of the Convention. That article was of particular importance as it also recommended that those States parties which recognized the competence of the Committee to receive and consider communications from individuals should establish or indicate a body within their national legal order which should be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claimed to be victims of a violation of any of the rights set forth in the Convention. However, none of the 14 countries which had ratified article 14 had so far set up a body of the kind suggested in the article.

225. Mr. Oumar Ndjaye (Senegalese Human Rights Committee) described the human rights activity of the Government of Senegal as an extension of the first demands for human rights made, before the issue came of age, by the representatives of the town of Saint-Louis du Sénégal in the form of lists of grievances and complaints submitted to the Etats généraux of France at Versailles in 1789. The current concern in Senegal was not to usher in democracy, but to contribute to the consolidation and enhancement of the achievements of a system that could always be improved.

226. The Senegalese Human Rights Committee, which had been in existence for over 20 years, pursued the same objectives as similar bodies in other countries. In other words, it studied all issues relating to human rights, strove to familiarize the general public with those rights, coordinated the activities of the NGOs and other human rights bodies, and assisted the Government with its views and recommendations by reporting to it annually on its activities. All that it performed with the independence and transparency guaranteed by the law, but also and above all by the status of the persons charged with that task, who were headed by the First President of the Supreme Court of Senegal.

227. As part of the constant development of human rights, Senegal had recently inaugurated two new institutions: the Médiateur de la République (Mediator) and the Supreme Broadcasting Council. The Mediator, who was an independent official instituted by an Act of 11 February 1991, was essentially responsible for protecting the rights of natural and legal persons who considered they had suffered injury as a result of the action of a public department, or of any of the bodies invested with a public service mission. In performing his task, the Mediator received, without time-limit, written complaints about the agencies concerned. If the complaints appeared to be justified, subsequent to an investigation, he made any appropriate recommendation to settle the problem brought to his attention and, if necessary, any proposal to improve the operation of the body concerned. The proposals could even concern amendments to legislation and regulations, in which case they were submitted, after consultation with the Ministers concerned, for a decision by the President of the Republic.

228. The Mediator could also, if appropriate, request the competent authority to initiate disciplinary proceedings against any official guilty of serious professional misconduct or lodge a complaint with the criminal court. If the request was not followed up, the Mediator informed the President of the Republic, who decided whether there were grounds for instructing the competent authority to initiate interim relief proceedings. For reasons of

transparency, and in order to involve the Senegalese people as a whole in assessing the results achieved by the Mediator, his annual report to the Head of State was published in the Journal Officiel.

229. The Supreme Broadcasting Council, which had been established by Presidential Decree in July 1991, was responsible for protecting and promoting political rights. It sought to ensure democratic respect for the rights of the 17 political parties existing in Senegal, in particular the right to vie for the votes of electors in complete transparency. It accordingly ensured that debates organized by the Senegalese Broadcasting Office were properly broadcast, from the standpoint of both content and duration. The Supreme Council's role was not restricted to the monitoring of the handling of information by the State media during an electoral period. It was presided over by a Supreme Court judge and comprised both academic representatives and media professionals. It had an ongoing responsibility as arbitrator in radio and television matters, and was called upon to make determinations in respect of any relevant complaints and claims and to issue decisions that were directly enforceable.

230. Mr. Cees Flinterman (President of the Netherlands Committee on Human Rights and Foreign Policy) said that the body over which he presided was exclusively devoted to human rights and foreign policy issues. It had been established by the Government, by virtue of an Act, to advise the Minister for Foreign Affairs. Its establishment was also based on the conviction that the promotion and protection of human rights throughout the world formed an essential part of foreign policy. The Act did not authorize the Committee to consider national issues.

231. The Committee comprised 17 members representing the various segments and sectors of society, in particular employers' associations, trade unions, women's associations, non-governmental organizations active in the field of human rights and the media. However, all its members were appointed in their capacity as experts. The Minister for Foreign Affairs and the Minister for Development and Cooperation could take part in its proceedings at their request. Advisory reports had already been submitted to both Ministers and had played a major role in public foreign policy debates. For example, reports had focused on human rights and international economic relations, human rights and cooperation for development, and human rights and the coordination and harmonization of the right of asylum among West European States.

232. The Netherlands so far had no commission with overall competence in the area of human rights of the type that existed in several countries. However, it did have an ombudsman, an equal opportunity commission and a national office to combat racial discrimination, which played a role similar to that of a national commission on human rights. Furthermore, individuals could invoke the provisions of international human rights instruments before the national courts and submit individual complaints to the international bodies monitoring the human rights treaties to which the Netherlands was a party, such as the Human Rights Committee or the Committee on the Elimination of Racial Discrimination.

233. In the light of the proceedings of the Workshop, the Netherlands might consider grouping within a single commission the various institutions to which he had referred. He felt, however, that national commissions or similar institutions should never supplant a strong and independent Judiciary, they provided an additional guarantee of the promotion and protection of human rights.

234. Mr. Paulo Ungari (Italian Commission on Human Rights) said that the Italian Commission was only competent in cases of violations of human rights abroad and, at a secondary level, in cases involving the right of asylum. It was not, however, an advisory commission of the Ministry of Foreign Affairs. It had been set up in 1984 by the Prime Minister and its members were selected from various human rights associations (Amnesty International, Union of Catholic Lawyers, human rights leagues, etc.). It should be noted that it had been set up on a temporary basis, because a bill establishing a national human rights agency was under consideration by Parliament. Under the provisions of the bill, the agency was subordinate to the Government and was to report to Parliament annually.

235. The Commission could have access to the documents of the Ministry of Foreign Affairs or the Ministry of National Defence. It had discretionary powers to take up any questions it deemed necessary. It was represented on the Government's commission for the implementation of the treaties of the Helsinki Conference on Security and Co-operation in Europe. The only restriction imposed on it was that its report should be approved by the Ministry of Foreign Affairs before publication. It maintained close links with the non-governmental organizations, and in particular with the associations of exiles, the National Council for Refugees, the trade unions and the various churches in Italy.

236. He supported the Rapporteur's idea that each country should establish its own institutions for the promotion and protection of human rights, in accordance with its legal and constitutional tradition and its administrative structure. In Italy, there were four other bodies besides the Commission with responsibility for the protection of human rights which it would be difficult to bring together into a single body: an inter-ministerial commission for the implementation of international conventions, a national commission for equality between men and women, regional ombudsmen (in Lombardy and Tuscany, for example) and the Ministry of Emigration and the Right to Asylum.

237. Mrs. Myrian Bréa Honorato de Souza described the Brazilian Council for the Defence of the Rights of the Individual. It had been re-established by Act No. 5314 in 1984. Its predecessor had been obliged to suspend its activities from 1961 to 1964. It had been restructured in 1986, and was composed of a President (the Minister of Justice), a Vice-President and 13 members, including representatives of the National Congress, the Ministry of Foreign Affairs, the Government Procurator's Office, the Brazilian Bar Association, the Brazilian Association for Education and the Brazilian Press Association, and professors of civil and criminal law. The Council was attached to the cabinet of the Minister of Justice. It held six meetings a year to consider human rights problems arising at the national level.

238. At present, in the face of the violence against children in Brazilian cities, the Council, in agreement with the governments of the states of the Federation, had launched a national plan to combat violence against children and adolescents. It was also developing programmes for the promotion of human rights jointly with the Ministry of Education. In addition, a seminar on the international human rights instruments had been organized in Brazil by the Centre for Human Rights for representatives of the Government Procurator's Office and the Secretariat for Security and Justice.

239. Mr. Jacob Söderman (Parliamentary Ombudsman, Finland) said that his work consisted in supervising and monitoring the legality of acts by the Government and the public authorities.

240. Finland had incorporated the International Covenant on Civil and Political Rights and the European Convention on Human Rights into its national legislation, which meant that human rights law was immediately enforceable in Finnish courts. The national law could also be interpreted in the light of the international conventions. In order to ensure conformity with the law, the Government had asked the Finnish judicial authorities to take human rights standards into account or face the risk of being criticized by the ombudsman. There was thus a greater awareness of human rights in Finland.

241. In Finland, however, there was no autonomous institution with responsibility for the promotion and protection of human rights because the Government did not hold the view that human rights was a separate area, but rather endeavoured to integrate them into an overall effort to secure better legal protection for the individual. As a result of that integrated approach, the Finnish Constitution would be amended so as to enable the ombudsman to monitor the way in which the Government was discharging its international obligations.

242. The powers of the ombudsmen were traditionally restricted to national issues, and that should remain the rule. It was true that the monitoring of the Government's international obligations added an international dimension to the activities of the ombudsman, since he was complementing the activity of the international control bodies. The fact remained that the ombudsman should not intervene in the consideration of individual complaints brought before these bodies. He could, of course, give advice to anyone who consulted him on how to submit matters to those bodies and perhaps also attend a hearing of those bodies as an independent expert. However, it would be incompatible with his functions to lodge a complaint against his own Government at the international level. It was noteworthy that neither the Optional Protocol to the International Covenant on Civil and Political Rights nor the European Convention on Human Rights envisaged such a role for ombudsmen.

243. Mr. Alexandru Dumitrescu (Romanian Commission on Human Rights, Worship and the Problems of the National Minorities, Assembly of Deputies) said that since the fall of the dictatorship in Romania, respect for human rights had become a reality. The present Romanian Parliament which was the product of free elections, had built a legislative structure that was compatible with the universally recognized principles of democracy. The Romanian Constitution contained provisions concerning the principles of human rights that were generally recognized throughout the world. It was in that spirit that

Parliament had, for example, abolished the death penalty, ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and revised the fundamental principles of criminal procedure to bring it in line with the relevant international standards.

244. The Commission on Human Rights, Worship and Minorities was attached to the Romanian Parliament, which had also set up a Human Rights Institute to ensure that the public institutions, non-governmental organizations and citizens were better informed about human rights problems. Another function of the Institute was to inform international public opinion and the international agencies concerning the human rights situation in Romania.

245. The Commission and the Institute had submitted recommendations to Parliament with a view to the adoption of legislative provisions concerning the protection of human rights. It was through their efforts that the Romanian Parliament had already enacted 22 laws in the areas of the rights of the child, trade union rights and labour in general, and amended the Code of Criminal Procedure.

246. Mr. Augusto Antonioli Vasquez (Minister of Justice, Peru) said that Peru had created a legal and constitutional framework which guaranteed protection of human rights. The 1979 Constitution had been inspired by the great ideas underlying the Universal Declaration of Human Rights of 1948. The separation of powers was written into the Constitution, and legal provisions enabled proceedings to be initiated for the violation of constitutional guarantees (habeas corpus, remedy of amparo, popular action). The Constitutional Guarantees Court was empowered to review the decisions of the Supreme Court. In addition, Peru recognized the competence of the international bodies.

247. In his view, Peru needed another agency with responsibility for promoting and protecting human rights because the National Human Rights Council, set up in 1986 by presidential decree and headed by the Minister of Justice, was no longer operational. The political instability of the Ministry of Justice (since 1986, it had been headed by seven different people) and of the Executive Secretariat of the Minister of Justice was having a negative impact on the operation of the Council. Consideration should be given to establishing an autonomous body, but it should be attached to the Office of the President of the Republic and be given very wide powers and a membership which reflected a degree of sociological and political pluralism.

248. Mr. Louis-Edmond Pettiti (Pax Romana) pointed out that the only valid criterion for judging human rights was the effectiveness of standards; consequently it was clear that the constitutional and legislative trappings, as well as democratic and pluralist processes, were not sufficient if they did not produce results. For example, he deplored the fact that although it had an outstanding membership which was empowered to apply the African Charter on Human and Peoples' Rights, which was flawless, the African Commission on Human and Peoples' Rights was inoperative because it was unfortunately not supported by all States.

249. Assessing the 20 years of activity of the various national institutions for the promotion and protection of human rights, he said that they had been of little value in improving the daily social and judicial lot of the

individual. Massive and individual violations of human rights had increased in number and seriousness. It was true that at the regional level the decisions of the European Court of Human Rights and the Inter-American Court of Human Rights had given rise to significant legislative amendments, but, worldwide, a mere 1 per cent or 1 per 1,000, according to the different regional systems of individual applications, reached the instruments which should govern them. On the credit side, the commissions and the non-governmental organizations constantly took Governments to task and that had contributed to the implementation of reforms which had proved productive in the protection of human rights.

250. The root causes of human rights violations must therefore be explored. Firstly, in his view, there was connivance between the police and the army, who held the reins of public authority and in cases of extortion protected one another. The result was that, on average, the perpetrators of only 1 per cent of extortions were genuinely punished. Secondly, there was the role of the media lobby and drug dealers who infiltrated and corrupted the State institutions.

251. The mechanisms available to national institutions to make their action more effective so that they would serve neither as an alibi nor as a screen for the authorities above all required better training in the area of human rights for the army and the police. Furthermore, the enhancement of their status would provide another means of enabling them to be parties in civil proceedings against human rights violations and, together with the procurators and public prosecutors, help to trigger public action whenever human rights violations were committed. Personal liability suits against public officials who perpetrated violations and extortions should be encouraged through the national commissions in order to reduce the virtual immunity which the officials enjoyed.

252. Mr. Tovar Tamayo referred to the activities of the Inter-American Court of Human Rights. In connection with Mr. Pettiti's statement, he said he was surprised that the main perpetrators of human rights violations, namely the police and the army were not interested in, or invited to, international meetings such as the present one on human rights. He was also surprised that very few proposals had been made with a view to monitoring the misdeeds of the police and the army. He accordingly proposed that "Supervision of the police and the army by the ombudsman" should be the topic of another meeting or a study.

253. Mr. Chamari (International Commission of Jurists) proposed that the national institutions should take part in the proceedings of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities with a different status from that of government delegations and not as members of those delegations as was sometimes the case. If his proposal was adopted, it should serve symbolically to highlight the independence of those institutions vis-a-vis the representatives of States.

V. ADOPTION OF RECOMMENDATIONS AND CLOSURE OF THE WORKSHOP

A. Recommendations

254. At the end of their work on 9 October 1991, the participants in the International Workshop drafted and adopted the following recommendations:

The participants in the International Workshop,

Having recognized the fundamental importance of the role of the national institutions in protecting fundamental freedoms, promoting democracy, strengthening dialogue between the Government and civilian society, and the emergence of a universal culture of human rights based on the effective application by the Member States of the principles set forth in the Charter of the United Nations and the international human rights instruments,

Considering that a national institution must be a body, an authority or an organization performing general and specific functions in the protection and promotion of human rights,

Conscious of the fact that, although it is the responsibility of each country to choose the form of institution for the protection and promotion of human rights which best meets its needs at the national level, it is important that, out of a concern for universality, it should take into account the experience acquired by other countries in order to achieve the highest international standard,

Noting that these institutions most often adopt either a collegial structure (national commissions on human rights) or a personalized structure (ombudsmen or mediators), and that apart from their advisory power in the area of human rights policies, some of them have quasi-jurisdictional powers in respect of violations of personal freedoms,

Having devoted their deliberations mainly to the experiences of the national commissions,

Wish to emphasize the specific importance and effectiveness of ombudsmen and mediators for the protection of human rights and fundamental freedoms;

Recommend that the results of their proceedings should be made use of in the finalization of a manual on national institutions by the United Nations Centre for Human Rights, in accordance with Commission on Human Rights resolution 1991/27, paragraph 10;

Recommend that the Commission on Human Rights should transmit the following principles to the Preparatory Committee for the World Conference on Human Rights in 1993;

Consider that, in order to develop the national human rights institutions and to encourage their establishment, Governments should take into account the following principles in their national legislation:

PRINCIPLES RELATING TO THE STATUS OF COMMISSIONS AND THEIR ADVISORY ROLE

Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

- Trends in philosophical or religious thought;

- Universities and qualified experts;

- Parliament;

- Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity);

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence;

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

ADDITIONAL PRINCIPLES CONCERNING THE STATUS OF COMMISSIONS WITH QUASI-JURISDICTIONAL COMPETENCE

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representive organizations. In such circumstances, and without prejudice

to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations on administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

In order to ensure that action is taken on the results of the Workshop, the participants recommend to the Commission on Human Rights that it should organize another seminar, which could be held after the 1993 World Conference.

SPECIFIC RECOMMENDATION

The participants in the International Workshop recommend that the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the field of Human Rights should be increased in order that adequate assistance may be provided to the national institutions.

B. Closure of the Workshop

255. The Under-Secretary-General for Human Rights made a closing statement and Mr. Roland Dumas, Minister of State and Minister for Foreign Affairs of the French Republic, declared closed the first International Workshop on National Institutions for the Promotion and Protection of Human Rights.